

**Harris Corporation, Computer Systems Division and
Leonard Accardi. Case 2-CA-17801**

30 March 1984

DECISION AND ORDER

**BY MEMBERS ZIMMERMAN, HUNTER, AND
DENNIS**

On 30 September 1982 Administrative Law Judge Eleanor MacDonald issued the attached decision.¹ The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions² and to adopt the recommended Order.³

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Harris Corporation, Computer Systems Division, Fort Lauderdale, Florida, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.

¹ On 15 October 1982, the judge issued an Erratum, inserting a footnote inadvertently omitted from her 30 September 1982 decision.

² In affirming the judge's decision we are satisfied that her findings establish that Charging Party Accardi was discharged for engaging in protected concerted activity as defined in *Meyers Industries*, 268 NLRB No. 73 (Jan. 6, 1984). Member Zimmerman adheres to his dissenting opinion in that case.

³ We will modify the judge's notice to conform with his recommended Order.

APPENDIX

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge our employees for engaging in concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Leonard Accardi immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and WE WILL make him whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL notify Leonard Accardi that we have removed from our files any reference to his discharge and that the discharge will not be used against him in any way.

**HARRIS CORPORATION, COMPUTER
SYSTEMS DIVISION**

DECISION

STATEMENT OF THE CASE

ELEANOR MACDONALD, Administrative Law Judge. This case was tried in New York, New York, on March 10, 11, and 16, 1982. The complaint issued on March 30, 1981, alleging that Respondent discharged its employee Leonard Accardi in violation of Section 8(a)(1) of the Act because Accardi made concerted complaints to Respondent regarding terms and conditions of employment and in order to discourage employees from engaging in concerted activities.

Respondent denied that Accardi engaged in concerted activities and denies that it was aware of any concerted activities on his part. Respondent asserts that Accardi was discharged for the manner and means of a protest in which he was engaged and for the harsh, destructive tone of a letter he sent to high level management.

On the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the parties in May 1982, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Delaware corporation, with an office and place of business in Fort Lauderdale, Florida, is engaged in the manufacturing, nonretail sale, and servicing of data processing equipment. Annually, Respondent derives gross revenues in excess of \$1 million and sells and ships from its Fort Lauderdale, Florida facility products,

goods, and materials valued in excess of \$50,000 directly to points outside the State of Florida. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.¹

II. ALLEGED UNFAIR LABOR PRACTICE

A. The Facts

Leonard Accardi was employed as a senior field engineer by Respondent from January 1977 to January 1981. Accardi installed and maintained Harris computer systems primarily on Long Island, but also in New York City, Boston, Rochester, Poughkeepsie, and New Jersey. Accardi worked out of his home in Middle Village, New York.² Accardi's immediate supervisor was Northern District Manager Jerry Lewis whose office was in Wellesley, Massachusetts. Accardi had met and worked with other field engineers who lived and worked in the New York area, including Martin Harvey, Robert Volk, Len Berdy, John Ballentine, and Larry Shindelman.

Respondent's table of organization at the relevant time was as follows: northern district manager—Jerry Lewis; eastern regional manager of field service—Richard G. Tell; director of field service, computer systems division—John R. Hammond; vice president, general manager, computer systems division—Howard A. Thrailkill; group executive vice president—Jack Davis; president, Harris Corporation—John T. Hartley Jr.; chairman of the board CEO—Joseph A. Boyd.

1. The Montenes incident

Accardi and other witnesses testified about an incident in which Accardi was involved in October 1978, which resulted in a letter writing campaign by Accardi that lasted well over 1 year. The incident involved a Mr. Montenes, vice president of PRD, a division of Harris Corporation.³ Accardi and Montenes were involved in a verbal contretemps at PRD on October 12, 1978. The merits of that dispute are not important to the instant case; it is only necessary to state that Montenes ordered Accardi off the PRD premises and that Accardi felt humiliated and unjustly treated. Accardi informed his then supervisor, Gil Haskell, that Montenes had ordered him off the premises and Haskell told Accardi to meet him at PRD a few days later when Haskell would try to adjust the matter. On the appointed day, Accardi went to PRD

and, not finding Haskell there, entered the premises and handed Montenes' secretary a letter for Montenes demanding an apology "before 5:00 p.m. today." He was again ejected from the premises.

As a result of these events, Accardi was barred from the PRD account. While in Fort Lauderdale 2 months later, Accardi spoke to Director of Field Service John R. Hammond about the problem and Hammond told Accardi that he would be taken off the account. Hammonds' attitude was that Montenes was a customer and that nothing could be done to vindicate Accardi. Accardi was not satisfied with this response, and Hammond arranged for him to speak to Winton Boone, director of personnel. Boone adopted the same attitude, and Accardi informed him that he was going to write to someone else in management.

On December 11, 1978, Accardi addressed a lengthy letter to John T. Hartley Jr., president of the Harris Corporation, stating that he had been insulted, humiliated, and threatened by Montenes and complaining of the latter's failure to apologize. Receiving no reply, Accardi next addressed a letter to Joseph A. Boyd, chairman of the board of the Harris Corporation, enclosing a copy of the letter to Hartley and complaining about the lack of response. Accardi's letter to Boyd stated:

History has shown that incidents touching on human rights and personal dignity that were left unchecked by management have resulted in, among other things, employees turning to unions to see that grievances received proper attention; and the denial of government contracts to an offending corporation.

A few days later, Accardi received a reply from Hartley stating that the delay in answering was due to the Christmas holidays and promising an investigation and a response. As a result, Accardi received a letter dated January 16, 1979, from Jack C. Davis, group executive vice president, stating that a full review of the incident had been undertaken. Davis informed Accardi that he viewed Montenes as a customer, that "the customer is always right," and that no further action should be taken. The letter offered apologies for any embarrassment suffered by Accardi and expressed Davis' willingness to discuss the matter with Accardi "if you have any questions regarding my philosophy." Accardi telephoned Davis to express his dissatisfaction and told him that he would pursue the matter further.

On February 2, 1979, Accardi again wrote to Hartley, characterizing Davis' letter as "totally inadequate" and a "white wash," complaining that he had been insulted and humiliated, stating that "the customer is not always right," and expressing the expectation that Montenes would be dealt with "swiftly and severely" and that Accardi's reputation with his coworkers and with people at PRD would be "restored." Hartley replied to Accardi by letter dated February 14, 1979, stating that Accardi's reputation had not been "impacted," that no further action was indicated and exhorting Accardi to dedicate his energies to his job.

¹ Respondent argues that the charge in this case was filed in Region 2 (New York City) rather than in Region 10 (Atlanta) where the discharge occurred in violation of Sec. 102.10 of the Board's Rules and Regulations, and that therefore the Board lacks jurisdiction of the case. The General Counsel urges that Accardi worked in New York while employed by Respondent and that there was an appropriate basis for filing the charge in Region 2. Venue is not a matter affecting the jurisdiction of the Board, and Respondent's argument as to jurisdiction is without merit. *Allied Products Corp.*, 220 NLRB 732, 733 (1975).

² Respondent has an office in New York City which was used, *inter alia*, to store parts. Accardi had been to this office to install and maintain a system, to retrieve stored parts, and to meet with the district manager. It appears that the field engineers received assignments by telephone at their homes.

³ PRD was also a customer of the computer systems division. PRD was encouraged to purchase Harris computers although it was not required to do so.

Accardi wrote once more to Boyd on April 26, 1979, about a "disgraceful" and "whitewash investigation," in a letter which, after a lengthy recitation of the slights suffered by him in relations to the Montenes incident, threatened an appeal to "legislators, government officials and agencies, members of the Board of Directors, individual stockholders, and other employees."

As a result of this letter, Accardi was contacted by Roy Solaski, vice president of Human Resources, with whom he reviewed the entire Montenes incident. Solaski promised to look into the matter, and in October or November 1979 Solaski presided at a meeting between Accardi and Montenes where the two shook hands, and where Montenes apologized to Accardi and told him that he was not barred from PRD. After that, Accardi went back and performed work at PRD. However, Accardi was still not satisfied because of the fact that he had not received a letter from Solaski describing their meeting; Accardi repeatedly insisted on receiving the letter and it finally arrived in March 1980.

2. The November 11, 1980 memorandum and its results

During his period of employment with Respondent, Accardi attended three training sessions at the Harris training department in Fort Lauderdale, Florida, the purpose of which was to teach field personnel how the Harris equipment worked and how to repair it. These training sessions were attended by approximately 15 Harris employees. Accardi testified that for each of these three sessions he had rented a car and selected a hotel, both at Respondent's expense.

Around November 14, 1980, Accardi received in the mail a memorandum dated November 11, 1980, from Richard G. Tell, eastern regional manager of field service, addressed to eastern field service personnel. Tell stated that he was attaching a memorandum from John Hammond, director of field engineering, clarifying the company policy, "not uniformly administered" in the past, concerning conditions applicable to training in Fort Lauderdale.

The Hammond memorandum, dated October 29, 1980, provided *inter alia*:

Motel will be arranged by Field Service Administration All students will stay in the same motel Transportation from the airport to the motel will be by LIMO. Transportation from the motel to the Harris facility and return to the motel will be by rental car, one for every 4 students. One student will be designated as the driver.

Tell's comments concerning the policy assured employees that "you will still have individual room accommodations [sic]" and informed them they were free to rent a car at their own expense or to drive their own cars to Fort Lauderdale on their own time.

Accardi testified that the memorandum of November 11, 1980, disturbed him because it referred to four employees in a car with a designated driver. Accardi did not like the idea of driving with people he did not know and who might be unsafe drivers. He had heard recently

of a Harris employee who had been killed driving a rental car at a training session, and he was concerned about the issue of safety.⁴ Furthermore, the memorandum changed what he believed to be the current policy that employees at training sessions could select their own hotels.

Accardi proceeded to discuss the memorandum with some other field service engineers. He spoke to Martin Harvey about five or six times over the telephone. Accardi and Harvey had been complaining about a number of matters to District Manager Lewis, and Harvey's comment on receiving the Tell memorandum was "here's another mandate coming down from management."⁵ Accardi replied that they were not getting any answers or any action by asking Lewis to relay their complaints to John Hammond, and he suggested that they "tell somebody else in management what's going on here." Accardi offered to draft a letter. During this conversation, the two men discussed their concern about driving with a "designated driver" and their view that this was a safety hazard, and they voiced their belief that the memorandum reflected a policy of which they had not been aware. A few days after this conversation when Accardi had prepared a rough draft of a letter, he again spoke to Harvey and, in a series of conversations, Accardi refined the rough draft with Harvey's assistance. Harvey was concerned about the policy relating to car rentals, but he also wished to raise the question of salary increases and company reimbursement rates for gas mileage. Harvey told Accardi that he wished the letter to include a reference to the fact that employees had voiced their complaints through Jerry Lewis a few months before. Accardi and Harvey discussed the fact that Hammond did not have an office in Florida and commuted from Atlanta and that this practice increased travel costs to the Company.

Accardi testified that he and Harvey worked on the language of the letter, and that he read Harvey the final draft over the telephone. Harvey approved the letter and offered to sign it; however, Accardi did not wish Harvey to sign the letter because he thought it was "better to have a spokesman for a group rather than complain as a

⁴ In fact the death of the employee, driving alone, alerted management that its policy that employees be required to share a car was not being consistently applied.

⁵ Harris employees had received a letter dated May 14, 1980, from Vice President Howard A. Thrailkill which expressed the Company's intention to keep its employees' salaries competitive. In various discussions among field engineers during 1980, several of them had expressed the fear that since they were at the top of their range, their salaries would remain frozen. The group had earlier expressed its dismay over frozen salary ranges to Jerry Lewis at a meeting held in February 1980. Other complaints relating to working conditions and field procedures were also mentioned, including auto mileage reimbursement rates. Lewis told the engineers that he would pass the complaints on to Hammond and Tell, but no response was ever received from high level management according to Accardi.

On cross-examination, Accardi acknowledged that mileage reimbursement rates had been increased by Respondent, albeit not soon enough in his view, and that Thrailkill's letter of May 14, 1980, answered complaints about salary ranges raised to Jerry Lewis, but that Accardi was not satisfied with the answer. Further, Accardi acknowledged that Lewis told the field service engineers that the daily car allowance was being looked into by management. Accardi received a wage increase in July 1980.

group" and because this was a "harsh letter." Accardi expected "hard feelings" and Harvey was a family man while Accardi could better bear the brunt of any reaction by management. Accardi also rejected Harvey's suggestion that all the field engineers sign the letter because he believed that it would be difficult to get five or six people to agree on the precise wording of the letter over the telephone.

Accardi testified that he spoke to Len Berdy twice by telephone concerning the memorandum of November 11. Berdy complained about the car rental policy and stated that he would rather pick his own hotel. Berdy thought it would be futile to write a letter to management, although in his discussions with Accardi he expressed concern over all the points raised in the draft. Accardi had asked Berdy to speak to John Ballentine about the engineers' complaints and, in a second conversation, Berdy reported to Accardi that Ballentine said, "he would refuse to go to training under those circumstances." During their second conversation, Accardi read Berdy an intermediate draft of the letter he planned to send and advised him he would address it to Thrailkill.

Accardi also spoke to Robert Volk who expressed his concern about the four people in a car policy and the hotel policy. Accardi told Volk he was going to write to Harris management, and in a second conversation he went over the letter with Volk who agreed with the points made therein.

Leonard Berdy testified that he spoke to Ballentine after he received the Tell and Hammond memoranda in November 1980. Berdy told Accardi that he disagreed with the training guidelines in the memoranda and that Ballentine had told him that he would rather not attend training under those guidelines. Berdy's testimony about the preparation of the letter generally corroborated the testimony given by Accardi. Robert Volk testified and he generally corroborated Accardi's testimony and provided details of his conversations with Harvey concerning their complaints and Accardi's efforts to draft a letter.

Accardi directed a letter dated November 28, 1980, to Thrailkill, attaching the memoranda of May 14, October 29, and November 11, 1980. Because the wording of this letter is at the heart of the instant case, it is reproduced in full as follows:

Dear Mr. Thrailkill:

I am a Field Engineer with Computer Systems Division, writing to you primarily concerning the enclosed memo from R. Tell and its attached memo from John Hammond.

It is not true that this was always Computer Systems Division policy. Previously, field engineers were treated like mature individuals, not like children or company property. The former policy was that each person could select his own motel, and was provided with an Avis rental car. Now, Field Service management is not only proposing to tell you where you will live, which alone is unsatisfactory, but is also effectively attempting to keep you prisoner there.

Forced group riding, with a designated driver, is totally unsatisfactory, and possibly illegal. Being herded into a car and entrusting your life to a person you don't know, an unprofessional driver at that, is out of the question. Let me cite the recent incident in which a Harris employee, in Fort Lauderdale for training, killed himself in a car accident. Imagine the repercussions if, because of a Harris mandate, he had been chauffeuring three family men at the time, and all were killed.

Beyond a few hundred miles, use of your personal car, under the conditions stated, when analyzed in terms of the number of days pay lost while traveling, motel bills, tolls, and other expenses, is a totally unsatisfactory alternative. To have a reasonable level of freedom and mobility in Fort Lauderdale, a car is a necessity, and if the company prefers people to use their own car, it is the responsibility of the company to pay for the time and expenses incurred while transporting the car there.

Since training is an integral part of Field Engineering, travel policies are an important consideration when accepting a job in the field, and a policy change of this magnitude translates into a significant reduction in effective compensation and status. It is, therefore, not surprising that people have refused to travel to Fort Lauderdale under these circumstances, making uniform administration impossible. Also typical of the purblindness of Field Service management is the assertion that individuality in initiative will be looked upon favorably, yet its prerequisite, individuality in transportation, is forbidden.

Training conditions should not be those of a prison, nor those of a vacation; but should permit living life as close to normal as possible under the circumstances.

It is particularly hypocritical that Mr. Hammond is the author of these restrictions, since one indication of a realistic and reasonable policy is a well set example. Mr. Hammond, and correct me if I am wrong, does not live in Fort Lauderdale, but frequently commutes from Atlanta at Harris' expense, maintains dual offices at Harris' expense, travels between his home in Atlanta and Fort Lauderdale at Harris' expense, does not stay in the assigned motel or pay his own motel bills, doesn't take LIMO's from the airport, or group ride to work, and doesn't pay for his own car rentals when in Fort Lauderdale.

I believe all employees should realize the benefits and advantages of keeping costs to a minimum. Reasonable and rational guidelines and other conscientious measures should be welcome, but ill-conceived despotic proclamations are not.

These travel rules are not the first, but only the latest in a series of tyrannical commands. For the past two years, policies and practices in Field Service have been counter to those of the corporation in general, and have contributed to a sharp decline in morale.

Two flagrant examples immediately come to mind. At a time of double digit inflation, when the corporation was reaffirming its commitment to its employees (a copy of your letter of May 14, 1980 is also enclosed), Field Service management was arbitrarily, without explanation, and without regard to performance, freezing some salaries and enforcing strict range limits. With inflation reaching 18%/year and the price of gas doubling, the Field Service personal auto reimbursement rate remained the same for 16 months until August 1979 when it was increased by a scant 10¢/day and 2¢/mile.

The implications by Mr. Tell that individual rooms are the next to be eliminated, and that Field Engineers, while in Fort Lauderdale, need his permission to rent a car at their own expense, are further indications of the megalomania of Field Service management.

Engineers in the field have, in the past, voiced complaints to Mr. Tell and Mr. Hammond through district management and have never even received the courtesy of an acknowledgement or a reply.

I, and many of my co-workers, believe that, if this letter goes unanswered and receives the same inattention that previous concerns have; if the new travel policies are not promptly withdrawn; and if steps are not taken toward resolution of other problems and issues that have arisen during the past two years; then it is time for a further appeal to corporate management and/or a more organized effort to obtain remedial action.

Yours truly,
Leonard T. Accardi

Accardi received a reply from Thrailkill dated December 17, 1980. The letter stated that Accardi's letter of November 28 had been referred to Hammond for a response, acknowledged that Accardi had bypassed his immediate supervisors in past, expressed confidence in Accardi's immediate supervisors, stated that Accardi's thoughts would be welcomed if management policy did not serve customers and employees, and closed with the sentiment that management policy should be made by managers and that relations with fellow employees should be carried out in "an atmosphere free of the threats and warnings set forth in your letter to me."

Accardi testified that he deliberately cast his letter of November 28 to Thrailkill in a "harsh" tone because "we wanted to make sure we'd get an answer, and we had been complaining and voicing concerns nicely for a long, long time and hadn't received any responses."

3. The discharge of Accardi

In early January 1981, Tell called Accardi and asked him to come to Atlanta to discuss the letter of November 28, 1980, with Hammond. Accardi met with Tell, Hammond, and Boone on January 8, 1981. According to Accardi, Hammond did most of the talking. When Hammond referred to Accardi's complaints and the latter broke in to say that they were not only his complaints but represented the complaints of field engineers in the

New York-New Jersey area, Hammond replied, "this letter is only signed by one person." Hammond told Accardi that group riding was not illegal and that the auto reimbursement rate was changed more frequently than asserted by Accardi. Hammond told Accardi that his own travel arrangements were a matter reserved for himself and management. Hammond concluded by saying that since Accardi "lacked confidence in management" and refused to go along with these travel policies, he was terminated. Accardi tried to interrupt to state that the letter did not contain a refusal to comply with the travel policies, but Hammond just repeated what he had been saying. Accardi then raised some of the complaints he had discussed with other field service engineers and he received answers about them from Hammond.

In mid-January, Accardi received a memorandum from Boone dated January 12, 1981, which stated that "you have been terminated because of your demonstrated lack of confidence in Field Service management and your perceived unwillingness to accept their authority in setting and modifying operating policies." The memorandum stated that the official date of Accardi's termination was January 11, 1981, and it closed with certain details relating to the mechanics of the termination.

On January 12, 1981, Accardi wrote to Thrailkill expressing dismay at his termination and requesting reinstatement.

John R. Hammond testified that as director of field service he was responsible for the installation and maintenance of computer systems at the premises of Respondent's customers. Richard Tell, the eastern regional manager, reported directly to him and Hammond reported directly to Thrailkill. Hammond testified that he first made Accardi's acquaintance during the Montenes affair. Hammond testified that he heard of Accardi's complaint in 1980 when Thrailkill handed him a copy of Accardi's letter of November 28, 1980, and asked for his comments. Upon reading the letter, Hammond became "infuriated." On December 17, 1980, he sent Thrailkill a memorandum commenting on the substantive points raised by Accardi concerning the motel, car rental, and salary policies.⁶ In closing, Hammond wrote:

Since Mr. Accardi has expressed such a complete lack of confidence in the Field Service Management, it is necessary that he be offered a transfer to another department or terminated. If he does not transfer, then in keeping with your policy that all terminations be approved by you in advance, I request your approval to terminate Mr. Accardi.

Hammond testified that Accardi's letter was "so strong . . . that we couldn't, probably work together, and that probably he couldn't do his job in the future." Hammond stated that when he read the last paragraphs of Accardi's letter of November 28, 1980, he understood Accardi to be threatening "another letter writing campaign." Hammond had not read the letters relating to the Montenes

⁶ Hammond stated that the reason for Respondent's shared automobile policy was "economics" and that the reason for the motel policy was that some motels guaranteed a lower negotiated rate to Harris employees.

incident but he had been told of their existence. He acknowledged that Accardi had not been told that another letter writing campaign could result in discipline or discharge, and he admitted that Accardi was not told of a set procedure to be followed in writing letters to management. Hammond also acknowledged that his memorandum to Thraikill mentioned as a rationale for the transfer or termination of Accardi only that Accardi had expressed "lack of confidence" in management, and did not mention the previous letter writing campaign or the strong wording of the letter. Hammond testified that Accardi was terminated because he "didn't like the tone of the letter." He cited particularly the words "tyrant" and "purblindness" and similar words. Hammond admitted that he knew both Accardi's letter and from Accardi's statement at the final interview that he was voicing the complaints of other employees. In addition, Hammond had heard complaints about mileage reimbursement rates, training policies, and the freezing of salary ranges from other employees before Accardi wrote his letter.⁷ However, Hammond believed that the letter was solely Accardi's and that the wording was his alone.

Winton Boone, director of personnel of the computer systems division, testified that he was personally involved in almost all disciplinary matters which arose in his division.⁸ Boone first met Accardi during the Montenes incident. Accardi wanted Montenes to apologize to him in front of all the people who had witnessed the altercation between them and Boone told Accardi that it was not reasonable to expect that this would happen.

Boone testified that he concurred in Hammond's recommendation to terminate Accardi for several reasons: Boone's observation of Accardi during the Montenes letter writing campaign had convinced him that Accardi was unreasonable; Boone was concerned about the tone of the November 28 letter and thought it had been written to get Hammond "in trouble" with his supervisor; Boone found that it was untrue, as asserted by Accardi, that people had refused to travel to Fort Lauderdale; and Boone did not feel that Accardi "was willing to support the field service management decisions, and could not basically be persuaded or be trusted to support succeeding field service directives." According to Boone, he is philosophically opposed to disciplinary transfers and he was the one responsible for declining to act on Hammond's suggestion to transfer Accardi.

Howard A. Thraikill, vice president and general manager of the computer systems division of Harris Corporation, testified that, in the particular area of the computer industry served by Respondent, service to customers was of paramount importance. Thraikill had heard of Accardi's letter writing campaign in relation to the Montenes incident before he received Accardi's letter of November 28, 1980. Thraikill stated that, when he first received Accardi's letter, he viewed it as a threat that if he did not take immediate action Accardi would contact his superiors. Later, he was more concerned that the letter

constituted a direct personal attack on Hammond and Tell in the nature of character assassination, and that it showed that Accardi, who represented Respondent's primary contact with its customers, would "pick and choose which . . . management philosophies and policies he would . . . adhere to." Thraikill approved Accardi's discharge because of Accardi's rejection of policies and his "personal assassination of people's character."⁹ He testified that he was concerned that Accardi would refuse to travel to Fort Lauderdale for training and that he was determined to prevent Accardi from engaging in another letter writing campaign to the highest levels of corporate management.

B. Discussion and Conclusions

It is evident from the facts set forth above that there had been dissatisfaction expressed by several field service engineers among themselves and to members of Harris management concerning their wages and working conditions, that after the receipt of the memorandum of November 11, 1980, there was further discussion of the subjects of dissatisfaction by the engineers, and that this discussion culminated in the drafting of a letter by Accardi with the participation of his fellow engineers which expressed their dissatisfaction over wages and working conditions to a vice president of Harris Corporation. Accardi testified that in writing the letter he inserted complaints suggested by his colleagues which raised matters about which he was not personally concerned; for example the letter mentioned frozen salary ranges, but this was not a matter about which Accardi cared greatly because he had received a wage increase in July 1980. The facts thus show that Accardi was engaged with field service engineers in "concerted activity for . . . mutual aid or protection." The participation of Accardi's fellow employees cannot be characterized as casual or peripheral, as asserted by Respondent, in view of the fact that Accardi received suggestions as to the language and substantive contents of the letter from the other engineers and he discussed the letter with them while he was drafting it. Since it is undisputed that Accardi was discharged because he wrote the letter of November 28, 1980, the General Counsel has established that Accardi was discharged for engaging in concerted activity in violation of Section 8(a)(1) of the Act.¹⁰

Respondent urges that Accardi's act was unprotected because the letter was harsh, insubordinate, and attacked the personal characters of members of Harris management. There is no doubt that the letter is written in a boorish, ill-bred, and hostile tone. However, concerted activity does not lose its protection under the Act unless the actions of those engaging in the activity are malicious, defamatory, or insubordinate.¹¹ Here, Accardi did not maliciously interfere with the exercise of Respondent's rights;¹² he did not engage in clearly deliberate or

⁷ Hammond testified that salary ranges and salaries generally had been discussed with field engineers, and that similar topics were raised in an attitude survey conducted among field service engineers and discussed at a followup meeting in Atlanta in August 1980.

⁸ Boone reported directly to Thraikill in the table of organization.

⁹ Thraikill personally authorized all disciplinary actions taken in his division.

¹⁰ *Rose Stores*, 256 NLRB 550 (1981).

¹¹ *American Hospital Assn.*, 230 NLRB 54 (1977).

¹² *Hicks Ponder Co.*, 168 NLRB 806 (1967).

malicious falsehood;¹³ and he did not use language which was worse than unkind and mannerless.¹⁴ Although Accardi used the terms "purblindness," "hypocritical," "despotic," "tyrannical" and the like, these are insufficient to deny his letter the protection of the Act.¹⁵ While Respondent disagreed with Accardi and his fellow employees that their complaints had gone unanswered, the reasonableness of the employees' belief cannot be an issue here.¹⁶ It is true that the letter of November 28 was written over the heads of Lewis, Tell, and Hammond and was thus not directed to Harris management through channels, but there is no basis for finding that this was a dischargeable offense; the record contains no evidence that Accardi was ever instructed to write letters to management only through proper channels. Indeed, even after the Montenes affair in which Accardi wrote to both the president and chairman of the board, Accardi was not warned that a repetition of such a letter writing campaign could lead to discipline or discharge. His letters to management during the Montenes incident were peremptory in tone and doggedly insisted on an apology even after Accardi had been instructed by mid-level management to forget the incident; yet he was not warned that impolite or strongly worded letters were a dischargeable offense. Indeed, Montenes finally apologized to Accardi, an outcome which must have appeared to Accardi as a vindication of his persistent letter writing technique.

Respondent urges that the letter of November 28 contains an untruth. Although the letter does state, "people have refused to travel to Fort Lauderdale," Accardi testified that he was referring to reports that Ballentine had stated he would refuse training under the conditions described in the November 11 memorandum. This portion of the letter is not clearly false. Respondent also argues that the letter is insubordinate in that Accardi engaged in an anticipatory refusal to comply with the Company's policy. However, although Accardi did characterize group riding as "unsatisfactory" and "out of the question," the letter did not state that he would not comply with the policy nor is there any proof that Respondent asked Accardi to attend a training session and that he refused to do so.¹⁷

Respondent objects to the "shocking" and "destructive" effect of Accardi's letter. Although the letter questioned Hammond's living arrangements, the reference was a demand for equality of treatment throughout the Company. While Respondent may view this as an attempt to stir up trouble for Hammond, I cannot find that the mention of Hammond's situation was so malicious as to deny the letter of protection of the Act.¹⁸

¹³ *Jacobs Transfer*, 201 NLRB 210, 218 (1973).

¹⁴ *American Telegraph & Telephone Co.*, 211 NLRB 782, 783 (1974), *enfd.* 521 F.2d 1159 (2d Cir. 1975).

¹⁵ See *American Hospital Assn.*, *supra*; *Postal Service*, 250 NLRB 4, 5-6 (1980); *Springfield Library & Museum Assn.*, 238 NLRB 1673, 1674 (1979).

¹⁶ *NLRB v. Washington Aluminum Co.*, 370 U.S. 9, 16 (1962).

¹⁷ Respondent asserts that the letter shows that Accardi would "pick and choose" which management policies to obey. However, there is no evidence that Accardi was ever insubordinate nor that he ever refused to obey a management order or directive.

¹⁸ Although Accardi did not publish his letter to Harris customers or to the public, I note that the cases dealing with that type of concerted

Respondent urges that, in view of Accardi's attitude toward management, management reasonably "lacks confidence in his contact with customers." However, aside from the Montenes incident for which Accardi was certainly not disciplined and in which he ultimately prevailed, it appears that Accardi had an unblemished record at Harris and there is no fact appearing in the record to show that Accardi did not conduct himself properly with Respondent's customers.

Respondent asserts that, even if Accardi's act is deemed concerted, Thrailkill, Hammond, and Boone were unaware of that fact when Accardi was terminated. However, the record shows that Hammond, who recommended termination, was aware of prior complaints by field engineers about the matters raised in the November 28, 1980 letter. Further, the letter itself refers to prior complaints by "engineers in the field." Finally, the concluding paragraph of the letter which is a demand for attention and a promise of future action if the complaints are not attended to, speaks in the name of Accardi and "my co-workers." Thus, I find that Respondent was on notice that Accardi was speaking for himself and his colleagues in the letter of November 28, 1980.¹⁹

CONCLUSIONS OF LAW

1. Harris Corporation is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Respondent violated Section 8(a)(1) of the Act by discharging Leonard Accardi because he engaged in concerted activities.
3. The aforesaid unfair labor practice affects commerce within the meaning of Section 2(b) and (7) of the Act.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent discharged its employee Leonard Accardi in violation of Section 8(a)(1) of the Act, I recommend that Respondent be ordered to reinstate him to his former position or, if it is no longer available, to a substantially equivalent position, without prejudice to his seniority and other rights and privileges, and make him whole for any loss of earnings or other monetary loss he may have suffered as a result of the unfair labor practice, less interim earnings if any. The backpay shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner described in *Florida Steel Corp.*, 231 NLRB 651 (1977).²⁰ It is further recommend-

communication would allow a similar latitude of expression. See *New York University Medical Center*, 261 NLRB 822 (1982).

¹⁹ Thus, I reject Respondent's reliance on *Wright Line*, 251 NLRB 1083 (1980), to the effect that Accardi would have been discharged in any event for insubordination, lack of confidence in management policy, and the destructive method of his protest.

²⁰ See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

ed that Respondent be ordered to expunge from its records any reference to the unlawful discharge of Leonard Accardi on January 11, 1981, and to provide written notice of such expunction to Leonard Accardi and inform him that Respondent's unlawful conduct will not be used as a basis for further personnel actions concerning him.

On the foregoing findings of fact and conclusions of law and on the entire record, I issue the following recommended²¹

ORDER

The Respondent, Harris Corporation, Fort Lauderdale, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging its employees because of their concerted activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action to effectuate the policies of the Act.

(a) Offer Leonard Accardi full reinstatement to his former position, without prejudice to his seniority and other rights and privileges, and make him whole for his

loss of earnings in the manner set forth in the section of this decision entitled "Remedy."

(b) Expunge from its files any references to the discharge of January 11, 1981, and notify Leonard Accardi in writing that this had been done and that evidence of this unlawful discharge will not be used as a basis for future personnel actions against him.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due.

(d) Post at its New York City office copies of the attached notice marked "Appendix."²² Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

²¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

²² If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."